

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 1536 of 2007
To
FIRST APPEAL No. 1548 of 2007**

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**THE STATE OF GUJARAT THROUGH THE SECRETARY & 2 -
Appellant(s)
Versus
SAVITABEN CHHOTABHAI PATEL - Defendant(s)**

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Appearance :

MR SUNIT SHAH G.P. for Appellant(s) : 1 - 3.[F.A. No. 1536/2007 to 1542/2007,]
MR HEMANG PARIKH A.G.P. for Appellant(s) : 1 - 3.[F.A. No. 1543/2007 to 1548/2007,]
MR JAYESH PATEL for MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/03/2007

ORAL COMMON JUDGMENT

1. **ADMIT.** Learned advocate Mr. Jayesh Patel waives

service of notice for admission. At the request of learned advocates for the parties, the matters are taken up for final disposal today itself. Mr. Jayesh Patel learned advocate for the respondents has supplied the paper book containing oral evidence as well as other documents. Hence, there is no need to call for the R & P of the case.

2. These appeals arise from the common judgment and award made by the Civil Judge (Senior Division), Bharuch dated 31st December, 2004 in Land Acquisition Reference Cases No. 1658/1997 and its allied reference cases. They are heard together and they are now being disposed of by this common judgment. The lands in question were required for public purpose namely, construction of Narmada Canal and, therefore, Notification under Section 4 of the Land Acquisition Act, 1894 [hereinafter referred to as the "Act"] was published in the Gazette on 16th August, 1995 and declaration under Section 6 of the Act was made on 21st November, 1995. After due compliance of all the formalities the Special Land Acquisition Officer made the award on 10th January, 1997. By the said award the Special Land Acquisition Officer assessed the compensation at Rs.3.90 paise per sq. mtr. Since the original applicants i.e., respondents

were not satisfied with the quantum of compensation, they made reference under Section 18 of the Act to the Collector, which ultimately culminated into the aforesaid reference cases. Before the District Court, the respondents claimed Rs.100=00 per sq. mtr. However, on the basis of the material produced before it, the Reference Court determined the compensation at the rate of Rs.21.70 paise per sq. mtr., i.e., additional compensation of Rs.17.80 paise per sq. mtr. These lands are situated at village Gajera.

3. While determining the market value the reference Court has placed reliance on the award of the District Court made in respect of the lands at village Ucchad, Taluka Jambusar, District Bharuch, which was produced at Exh. 12. It was made in Land Acquisition Reference Cases no. 872/1987 to 885/1987 and Land Acquisition Reference Cases No. 237/1988 to 235/1988. In the said cases notification under Section 4(1) of the Act was published on 8th December, 1983. The District Court determined the market value at Rs.7.10 paise per. sq. mtr. It appears from the record that the said judgment was not challenged in the appeal and it has become final.

4. In these appeals I have heard Mr. Sunit Shah

learned G.P., and Mr. Hemang Parikh learned A.G.P., for the applicants and Mr. Jayesh Patel learned advocate for the respondents. It is submitted by Mr. Parikh that the market value determined by the learned Judge is on higher side. According to him, the rate of compensation is required to be reduced substantially. As against that Mr. Jayesh Patel has submitted that notification under Section 4 of the Act was issued on 8th December, 1983 in the case of lands at Uccahd and the present notification under Section 4 of the Act is published after about 12 years. He has, therefore, submitted that 10% increase is required to be applied. Mr. Patel has drawn my attention to the decision rendered by the Division Bench of this Court in First Appeal No. 961/2007 to 970/2007 dated 27th February, 2007 and First Appeal No. 1058/2007 to 1079/2007. In both these groups of appeals before the Division Bench, the subject matter was the lands of village Gajera. The Division Bench has determined the quantum of compensation at the rate of Rs.15=00 per sq. mtr. In the said cases, notification under Section 4 of the Act has been issued in or around October, 1994. In the cases on hand, notification is dated 16th August, 1995. The difference is almost of one year. Even calculating on the basis of the award at Exh. 12, compensation can be awarded at Rs.15.62 paise, to round

of Rs.15.75 paise per sq. mtr., for these lands. The compensation granted by the Reference Court appears to be on higher side and the award is, therefore, required to be modified. In other words, the compensation is reduced to Rs.15.75 paise per sq. mtr., from Rs.21.70 paise per sq. mtr., and the respondents will be entitled to receive compensation at this modified rate. Rest of the benefits granted by the Reference Court will remain as they are.

5. In the result, these appeals are, therefore, partly allowed with no order as to costs.

[Akshay H. Mehta, J.]

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